SERVED: January 27, 1994

NTSB Order No. EA-4063

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 19th day of January, 1994

DAVID R. HINSON, Administrator, Federal Aviation Administration, Complainant, v. RICHARD LYLE HASLEY, Respondent.	Docket SE-11448

ORDER DENYING RECONSIDERATION

Respondent seeks reconsideration, rehearing, reargument, and modification of our order, NTSB Order EA-3971, served September 13, 1993. In that order, we affirmed a law judge's finding that respondent had violated 14 C.F.R. 61.3(c), 67.20(a)(4), and 121.383(a) and we affirmed the law judge's revocation of respondent's airline transport pilot and first class medical certificates. The Administrator has replied in opposition to respondent's petition. We deny the petition.[1]

For the most part, respondent's arguments on petition repeat

[1]Respondent has attached to his petition a number of documents, all of which are new evidence, acceptance and consideration of which is not justified under the requirements of 49 C.F.R. 821.50(c). Hence the matters are not acceptable.

arguments he made on appeal from the law judge's initial decision -- arguments we addressed and rejected in EA-3971. For example, respondent again argues that proof of a § 67.20(a)(4) violation (the alteration of a medical certificate) requires proof of intentional falsification or fraud. This is not the case, as the plain wording of the regulation demonstrates -- a matter on which our original decision was quite clear.

Similarly, as we discussed in our prior opinion, there is more than sufficient evidence in the record to support the finding that respondent violated § 67.20(a)(4). We see no support for the proposition suggested by respondent that the Administrator could not prove his case by a preponderance of the evidence by using testamentary evidence, but was somehow required to produce uncontrovertible documentary evidence showing the alteration to his medical certificate. There is no question but that the testamentary evidence from respondent's former colleagues supports a finding that he altered his medical certificate so as to hide the fact that he had not had the 6-month medical exam required of him to remain a pilot-in-command.[2] Moreover, although we found evidence of two alterations (as opposed to the one alleged in the Administrator's complaint), that does not detract from our affirmance of the Administrator's charge that respondent violated § 67.20(a)(4).[3]

We also see no need to elaborate substantially on our affirmance of revocation as an appropriate sanction. Contrary to respondent's claims, revocation does not require that we find him to be somehow lacking in either morals or command judgment. Nor, simply because revocation is the typical sanction when fraud or falsification is proven, is a lesser sanction appropriate in the absence of fraud or falsification. We reiterate our belief, unshaken by respondent's petition, that respondent's alteration of this official document to cover up his lack of a timely medical examination and avoid demotion (however temporary) demonstrates a willingness to compromise safety, and reflects a lack of qualification to hold his certificates.[4]

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[2]Respondent contends that Exhibit A-8 fails to support the Administrator's claims. We note, in passing, that the law judge specifically found (Tr. at 44) that Exhibit A-8 had been mutilated and had "a lot of erasures."

[3]We found that the 1-30-89 date of his last medical examination, as shown on his medical certificate, had been changed by hand to 4-30-89 by altering the "1" and that the 4-30-89 date had then been further changed by erasing the handwritten change and replacing it with a typewritten number 4. The Administrator's complaint charged only that the number 4 had been typed over the number 1.

[4]The Administrator's failure to prosecute this case as an

Finally, respondent raises an issue of first impression involving P.L. No. 102-345, the FAA Civil Penalty Administrative Assessment Act of 1992 (signed into law on August 26, 1992) (the CP Act). Respondent argues that this case must be remanded so that the law judge can consider: (1) reduction of the sanction to a civil penalty, pursuant to the Board's new, expanded authority; and (2) the Administrator's alleged failure to offer written, publicly available agency sanction guidance to support revocation here.[5] We disagree that either the CP Act or Administrator v. Oklahoma Executive Jet Charter, Inc. & Curtis, NTSB Order EA-3928 (1993), direct or support remand here.

In making the first argument, respondent fails to recognize that the Board on appeal, as well as the law judge, may modify sanction as among revocation, suspension, and civil penalty. Thus, when a case is already before the Board, there is no compelling requirement for remand. Review of the matter by the Board itself is quite appropriate.

(..continued)
emergency offers no support for a sanction less than revocation. Administrator v. Wisler, NTSB Order EA-3591 (1992). Further, mitigation of sanction depends not on factors such as respondent's subsequent accomplishments but on the existence, type, and degree of extenuating circumstances in the commission of the violation. See, e.g., Administrator v. Thompson, NTSB Order EA-3247 (1991) at n. 9 (neither violation free record nor good attitude justifies reduction of sanction); Administrator v. Morrone, NTSB Order EA-3661 (1992) (sanction mitigation is based on extenuating circumstances).

[5]The CP Act, at 49 U.S.C. App. 1471(a)(3)(D)(iii), reads (emphasis added):

> (iii) WEIGHT AFFORDED TO FINDINGS AND INTERPRETATIONS OF FAA.-- In the conduct of its hearings under this subparagraph, the National Transportation Safety Board shall not be bound by any findings of fact of the Administrator but shall be bound by all validly adopted interpretations of laws and regulations administered by the Federal Aviation Administration and of written agency policy guidance available to the public relating to sanctions to be imposed under this subsection unless the Board finds that any such interpretation is arbitrary, capricious, or otherwise not in accordance with law. The Board may, consistent with this subsection, modify the type of sanctions to be imposed from assessment of a civil penalty to suspension or revocation of a certificate.

Respondent further misconstrues the application of the CP Act regarding the matter of deference owed by the Board to "written agency policy guidance" of the Administrator. This provision is intended to specify that, where a dispute between FAA and NTSB arises over sanction, that dispute is to be resolved, as a general rule, in favor of the FAA, where the Administrator has proceeded according to written and publicly available guidelines. The provision does not speak to cases, such as the one at bar, where the NTSB and FAA are in agreement. In our view, and in keeping with precedent, the alteration of an official document to mask a lack of qualifications is a revocable offense. As this is a policy judgment that both agencies share, no issue of deference arises.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's petition is denied; and

2. The revocation of respondent's airline transport pilot and first class medical certificates shall begin 30 days from the date of service of this order.[6]

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above order.

[6]For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).